



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1162/1  
ML/JK/MS/JTK:kjf

2005 BILL

LPS:  
run spell  
check please

To editing 1/25

Done 1/31

Regen

1 AN ACT *to amend* 16.75 (6) (e), 16.855 (18), 16.855 (21) and 16.855 (22); and *to*  
2 *create* 16.753, 16.855 (23) and 560.29 of the statutes; **relating to:** requiring  
3 companies to report net losses of jobs to the Department of Commerce, making  
4 such companies and certain expatriate companies ineligible for certain tax  
5 exemptions, governmental contracts, grants, and loans, granting rule-making  
6 authority, and providing a penalty.

***Analysis by the Legislative Reference Bureau***

Beginning in January 2007, this bill requires a business that experienced a net loss of at least 100 employees in the preceding calendar year to notify the Department of Commerce (Commerce). The company must also complete and submit to Commerce a job relocation survey that includes, among other things, a statement of the number of those jobs that were transferred to employees located outside the United States and any contracts with or grants or loans made by the state or local government.

Under the bill, any company that has had a net loss of at least 100 employees because of jobs being transferred to employees outside of the United States and any expatriate company (a company that is organized under the laws of another country that is closely related to a company or former company organized in the United States) is, for a period of seven years, ineligible to: 1) receive any income or franchise tax credit or property tax exemption; 2) enter into a contract with the state or a local

**BILL**

governmental unit for the construction, remodeling, or repair of a public work or building, or for the furnishing of supplies, services, equipment, or material of any kind; and 3) receive any grants or loans from a local governmental unit. Under the bill, Commerce is required to maintain and update a list of such companies, and to post the list on its Web site. Agencies and local governmental units must review the list before entering into public contracts.

The ineligibility of a company under the bill may be waived or modified if Commerce believes that doing so is necessary to meet a compelling public interest. Finally, before entering into a contract with an agency or local governmental unit, a company must submit a declaration that the company is eligible to enter the contract under the bill. A company that knowingly makes a false, material statement in a declaration is guilty of a misdemeanor.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 16.75 (6) (e) of the statutes is amended to read:

16.75 (6) (e) The governor or his or her designee may waive any requirement of this subchapter if the governor or his or her designee finds that there exists an emergency which threatens the public health, safety or welfare and the waiver is necessary to meet the emergency. The governor or his or her designee shall require the award of each contract under this paragraph to be made with such competition as is practicable under the circumstances. The governor or his or her designee shall file with the department a statement of facts constituting the emergency for each waiver issued under this paragraph, and a statement of the basis for selection of each contractor under the emergency procedure. This paragraph does not apply to the requirement requirements specified in sub. (7) and s. 16.753.

**SECTION 2.** 16.753 of the statutes is created to read:

**16.753 Companies experiencing job losses and expatriate companies.**

No company whose name is certified by the department of commerce under s. 560.29

Commerce submits a

justification to the Department of Administration and the Joint Committee on Finance and JCF, and both DOA and JCF approve the waiver

(DOA) and the Joint Committee on Finance and JCF, and both DOA and JCF approve the waiver

**BILL**

(3) and no expatriate company, as defined in s. 560.29 (1), is eligible to enter into any contract with an agency for the purchase of materials, supplies, equipment, or contractual services for a period of 7 years beginning with the year in which the company is required to submit a report under s. 560.29 (2).

**SECTION 3.** 16.855 (18) of the statutes is amended to read:

16.855 (18) This Except as provided in sub. (23), this section shall not apply to restoration or reconstruction of the state capitol building, historic structures at the old world Wisconsin site and at Heritage Hill state park when the department determines that a waiver of this section would serve the best interests of this state.

**SECTION 4.** 16.855 (21) of the statutes is amended to read:

16.855 (21) This Except as provided in sub. (23), this section does not apply to contracts by the department of natural resources for construction work related to hazardous substance spill response under s. 292.11 or environmental repair under s. 292.31.

**SECTION 5.** 16.855 (22) of the statutes is amended to read:

16.855 (22) The provisions of this section, except ~~sub.~~ subs. (10m) and (23), do not apply to construction work for any project the estimated construction cost of which does not exceed \$100,000 if the project is constructed in accordance with policies and procedures prescribed by the building commission under s. 13.48 (29). If the estimated construction cost of any project is at least \$30,000, and the building commission elects to utilize the procedures prescribed under s. 13.48 (29) to construct the project, the department shall provide adequate public notice of the project and the procedures to be utilized to construct the project on a publicly accessible computer site.

**SECTION 6.** 16.855 (23) of the statutes is created to read:

**BILL****SECTION 6**

1           16.855 (23) No company whose name is certified by the department of  
2 commerce under s. 560.29 (3) and no expatriate company, as defined in s. 560.29 (1)  
3 (c), is eligible to enter into any contract with an agency for engineering or  
4 architectural services or for construction work, as defined in s. 16.87 (1) (a) for a  
5 period of 7 years beginning with the year in which the company is required to submit  
6 a report under s. 560.29 (2).

7           **SECTION 7.** 560.29 of the statutes is created to read:

8           **560.29 Companies experiencing job losses and expatriate companies.**

9           **(1) DEFINITIONS.** In this section:

10           (a) "Agency" has the meaning given in s. 16.70 (1e).

11           (b) "Company" means any organization or enterprise operated for profit,  
12 including a proprietorship, partnership, firm, business trust, joint venture,  
13 syndicate, corporation, limited liability company, or association.

14           (c) "Expatriate company" means an entity that the department determines is  
15 incorporated under the laws of a foreign country, that issues shares for which the  
16 United States is the principal market for public trading, that has no substantial  
17 business activities in its country of incorporation, and that was one of the following:

18           1. Established in connection with a transaction or series of related transactions  
19 pursuant to which the entity directly or indirectly acquired substantially all of the  
20 properties held by a corporation incorporated in the United States or all of the  
21 properties constituting a trade or business of a partnership organized in the United  
22 States or a related partnership not organized in the United States, and immediately  
23 after the acquisition, more than 50 percent of the shares, by vote or value, of the  
24 entity was held by former shareholders of the corporation incorporated in the United  
25 States or by former partners of the partnership organized in the United States or a

**BILL**

1 related partnership not organized in the United States. For purposes of this  
2 subdivision, any shares sold in a public offering related to the transaction or a series  
3 of transactions is disregarded.

4 2. Established in connection with a transaction or series of related transactions  
5 pursuant to which the entity directly or indirectly acquired substantially all of the  
6 properties held by a corporation incorporated in the United States or all of the  
7 properties constituting a trade or business of a partnership organized in the United  
8 States or a related partnership not organized in the United States, if the acquiring  
9 entity is more than 50 percent owned, by vote or value, by shareholders or partners  
10 who are residents of the United States. For purposes of this subdivision, indirect  
11 acquisition of property includes the acquisition of a share, or any portion thereof, of  
12 the owner of that property.

13 (d) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a).

14 (e) "Public contract" means a contract for the construction, execution, repair,  
15 remodeling, or improvement of a public work or building or for the furnishing of  
16 supplies services, equipment, or material of any kind.

17 (2) REPORTING. (a) On or before January 31, 2007, and annually by January  
18 31 thereafter, any company doing business in this state that had a net loss of at least  
19 100 employees in this state during the preceding calendar year shall notify the  
20 department of the loss.

21 (b) The department shall send to each company that notifies the department  
22 under par. (a) a job relocation survey that shall include, in addition, to any other  
23 information required by the department, all of the following:

24 1. The name and principle place of business of the company.

**BILL****SECTION 7**

1           2. Identification of any public contracts that the company has with the state  
2           or a local governmental unit.

3           3. Identification of any grants or loans that the company has received from the  
4           state or a local governmental unit.

5           4. Identification of any tax exemptions or credits that the company claims  
6           under ch. 70 or 71.

7           5. A statement of the number of the company's employees in this state who lost  
8           their jobs in the preceding calendar year.

9           6. A statement of the number of jobs that the company added in this state in  
10          the preceding calendar year.

11          7. A statement of the number of the company's employees in this state who lost  
12          their jobs because the jobs were transferred to employees located outside of the  
13          United States.

14          (c) A company shall complete and return the survey to the department within  
15          30 days of receiving it. A company that fails to respond to the survey is subject to the  
16          penalties under sub. (4) until such time that the survey is completed and returned  
17          to the department.

18          (3) CERTIFIED LIST. The department shall maintain a list of companies that are  
19          subject to the penalties under sub. (4) and shall post, and update, that list on its Web  
20          site. Waivers or modifications made under sub. (5) shall be noted on the list and Web  
21          site.

22          (4) PENALTIES. Notwithstanding the provisions of any tax exemption under ch.  
23          70 or tax credit under ch. 71 for which a company would otherwise be eligible, no  
24          company that has had a net loss of at least 100 employees because of jobs being  
25          transferred to employees outside of the United States, as reported under sub. (2) (b)

## BILL

1 7., an no expatriate company shall, for a period of 7 years beginning with the year  
2 in which the company is required to report the loss under sub. (2), be eligible to:

3 (a) Receive any tax exemption under ch. 70 or any tax credit under ch. 71.

4 (b) Enter into a public contract with a local governmental unit.

5 (c) Receive any grants or loans from a local governmental unit.

6 (d) Enter into a contract for the purchase of materials, supplies, equipment, or  
7 contractual services with any agency.

8 (e) Enter into a contract for engineering or architectural services or for  
9 construction work, as defined in s. 16.87 (1) (a), with any agency.

10 (5) WAIVERS; MODIFICATIONS. <sup>(a) A waiver or modification of</sup> ~~An agency may waive or modify~~ a penalty in sub.

11 (4) <sup>may be granted</sup> if the agency finds that the waiver or modification of a penalty that would  
12 otherwise be imposed is necessary to meet a compelling public interest, <sup>appropriate</sup> and the

13 department concurs, <sup>and the conditions of par. (b) are met</sup> ~~The department may waive or modify~~ a penalty in sub. (4) that

14 would otherwise be imposed on a company that is a prospective vendor to a local <sup>A waiver or modification of</sup>  
15 governmental unit <sup>may be granted</sup> if the department finds that the <sup>waiver</sup> ~~waiver~~ or modification is

16 necessary to meet a compelling public interest, <sup>INS 7-17</sup>

17 (6) DECLARATION; MISDEMEANOR FOR FALSE STATEMENTS. (a) Before entering into  
18 a public contract, all agencies and local governmental units shall review the  
19 department's Web site list described under sub. (3). As a condition of entering into  
20 a public contract with an agency or local governmental unit, a company shall submit  
21 a declaration stating that the company is not on the list under sub. (3).

22 (b) A company that declares as true any material matter in a declaration under  
23 par. (a) that the company knows or has reason to believe is false is guilty of a  
24 misdemeanor.

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twice

# BILL

1           (7) RULES. The department shall promulgate rules to implement and  
2       administer this section.

3 (END)



(b) If the department under par. (a) concurs ~~with~~ with an agency or ~~finds~~ <sup>finds</sup> that a ~~waiver~~ <sup>waiver or</sup> or modification request is necessary to meet a compelling public interest,

it shall ~~submit a copy of the request and~~ prepare <sup>that</sup> a detailed opinion to that effect and submit the opinion and the request to the

department of administration and the joint committee on finance. <sup>A waiver or modification</sup> ~~request may only be granted if both the~~

department of administration and the joint committee on finance approve the request. <sup>under this subsection</sup> ~~The review~~

of administration and the joint committee ~~on~~ <sup>approve or disapprove</sup> finance shall ~~approve or disapprove~~ under this

paragraph within 30 days of submission of <sup>opinion and</sup> the request.

**Basford, Sarah**

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**From:** Powell, Thomas  
**Sent:** Thursday, January 27, 2005 2:31 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-1162/2 Topic: Job preservation

It has been requested by <Powell, Thomas> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-1162/2 Topic: Job preservation



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1162/2  
ML/JK/MS/JTK:kjf:rs

2005 BILL

TODAY

Regen

1 AN ACT *to amend* 16.75 (6) (e), 16.855 (18), 16.855 (21) and 16.855 (22); and *to*  
2 *create* 16.753, 16.855 (23) and 560.29 of the statutes; **relating to:** requiring  
3 companies to report net losses of jobs to the Department of Commerce, making  
4 such companies and certain expatriate companies ineligible for certain tax  
5 exemptions, governmental contracts, grants, and loans, granting rule-making  
6 authority, and providing a penalty.

*Analysis by the Legislative Reference Bureau*

X Beginning in January 2007, this bill requires a business that experienced a net  
loss of at least ~~100~~ employees in the preceding calendar year to notify the  
Department of Commerce (Commerce). The company must also complete and  
submit to Commerce a job relocation survey that includes, among other things, a  
statement of the number of those jobs that were transferred to employees located  
outside the United States and any contracts with or grants or loans made by the state  
or local government.

X Under the bill, any company that has had a net loss of at least ~~100~~ employees  
because of jobs being transferred to employees outside of the United States and any  
expatriate company (a company that is organized under the laws of another country  
that is closely related to a company or former company organized in the United  
States) is, for a period of seven years, ineligible to: 1) receive any income or franchise  
tax credit or property tax exemption; 2) enter into a contract with the state or a local

**BILL**

governmental unit for the construction, remodeling, or repair of a public work or building, or for the furnishing of supplies, services, equipment, or material of any kind; and 3) receive any grants or loans from a local governmental unit. Under the bill, Commerce is required to maintain and update a list of such companies, and to post the list on its Web site. Agencies and local governmental units must review the list before entering into public contracts.

The ineligibility of a company under the bill may be waived or modified if Commerce believes that doing so is necessary to meet a compelling public interest, Commerce submits a written justification to the Department of Administration (DOA) and the Joint Committee on Finance (JCF), and both DOA and JCF approve the waiver. Finally, before entering into a contract with an agency or local governmental unit, a company must submit a declaration that the company is eligible to enter the contract under the bill. A company that knowingly makes a false, material statement in a declaration is guilty of a misdemeanor.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 16.75 (6) (e) of the statutes is amended to read:

2           16.75 (6) (e) The governor or his or her designee may waive any requirement  
3 of this subchapter if the governor or his or her designee finds that there exists an  
4 emergency which threatens the public health, safety or welfare and the waiver is  
5 necessary to meet the emergency. The governor or his or her designee shall require  
6 the award of each contract under this paragraph to be made with such competition  
7 as is practicable under the circumstances. The governor or his or her designee shall  
8 file with the department a statement of facts constituting the emergency for each  
9 waiver issued under this paragraph, and a statement of the basis for selection of each  
10 contractor under the emergency procedure. This paragraph does not apply to the  
11 requirement requirements specified in sub. (7) and s. 16.753.

12           **SECTION 2.** 16.753 of the statutes is created to read:

**BILL****16.753 Companies experiencing job losses and expatriate companies.**

No company whose name is certified by the department of commerce under s. 560.29 (3) and no expatriate company, as defined in s. 560.29 (1), is eligible to enter into any contract with an agency for the purchase of materials, supplies, equipment, or contractual services for a period of 7 years beginning with the year in which the company is required to submit a report under s. 560.29 (2).

**SECTION 3.** 16.855 (18) of the statutes is amended to read:

16.855 (18) This Except as provided in sub. (23), this section shall not apply to restoration or reconstruction of the state capitol building, historic structures at the old world Wisconsin site and at Heritage Hill state park when the department determines that a waiver of this section would serve the best interests of this state.

**SECTION 4.** 16.855 (21) of the statutes is amended to read:

16.855 (21) This Except as provided in sub. (23), this section does not apply to contracts by the department of natural resources for construction work related to hazardous substance spill response under s. 292.11 or environmental repair under s. 292.31.

**SECTION 5.** 16.855 (22) of the statutes is amended to read:

16.855 (22) The provisions of this section, except sub. subs. (10m) and (23), do not apply to construction work for any project the estimated construction cost of which does not exceed \$100,000 if the project is constructed in accordance with policies and procedures prescribed by the building commission under s. 13.48 (29). If the estimated construction cost of any project is at least \$30,000, and the building commission elects to utilize the procedures prescribed under s. 13.48 (29) to construct the project, the department shall provide adequate public notice of the project and

**BILL****SECTION 5**

1 the procedures to be utilized to construct the project on a publicly accessible  
2 computer site.

3 **SECTION 6.** 16.855 (23) of the statutes is created to read:

4 16.855 (23) No company whose name is certified by the department of  
5 commerce under s. 560.29 (3) and no expatriate company, as defined in s. 560.29 (1)  
6 (c), is eligible to enter into any contract with an agency for engineering or  
7 architectural services or for construction work, as defined in s. 16.87 (1) (a) for a  
8 period of 7 years beginning with the year in which the company is required to submit  
9 a report under s. 560.29 (2).

10 **SECTION 7.** 560.29 of the statutes is created to read:

11 **560.29 Companies experiencing job losses and expatriate companies.**

12 (1) DEFINITIONS. In this section:

13 (a) "Agency" has the meaning given in s. 16.70 (1e).

14 (b) "Company" means any organization or enterprise operated for profit,  
15 including a proprietorship, partnership, firm, business trust, joint venture,  
16 syndicate, corporation, limited liability company, or association.

17 (c) "Expatriate company" means an entity that the department determines is  
18 incorporated under the laws of a foreign country, that issues shares for which the  
19 United States is the principal market for public trading, that has no substantial  
20 business activities in its country of incorporation, and that was one of the following:

21 1. Established in connection with a transaction or series of related transactions  
22 pursuant to which the entity directly or indirectly acquired substantially all of the  
23 properties held by a corporation incorporated in the United States or all of the  
24 properties constituting a trade or business of a partnership organized in the United  
25 States or a related partnership not organized in the United States, and immediately

**BILL**

1 after the acquisition, more than 50 percent of the shares, by vote or value, of the  
2 entity was held by former shareholders of the corporation incorporated in the United  
3 States or by former partners of the partnership organized in the United States or a  
4 related partnership not organized in the United States. For purposes of this  
5 subdivision, any shares sold in a public offering related to the transaction or a series  
6 of transactions is disregarded.

7 2. Established in connection with a transaction or series of related transactions  
8 pursuant to which the entity directly or indirectly acquired substantially all of the  
9 properties held by a corporation incorporated in the United States or all of the  
10 properties constituting a trade or business of a partnership organized in the United  
11 States or a related partnership not organized in the United States, if the acquiring  
12 entity is more than 50 percent owned, by vote or value, by shareholders or partners  
13 who are residents of the United States. For purposes of this subdivision, indirect  
14 acquisition of property includes the acquisition of a share, or any portion thereof, of  
15 the owner of that property.

16 (d) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a).

17 (e) "Public contract" means a contract for the construction, execution, repair,  
18 remodeling, or improvement of a public work or building or for the furnishing of  
19 supplies services, equipment, or material of any kind.

20 (2) REPORTING. (a) On or before January 31, 2007, and annually by January  
21 31 thereafter, any company doing business in this state that had a net loss of at least  
22 <sup>50</sup>~~100~~ employees in this state during the preceding calendar year shall notify the  
23 department of the loss.

**BILL****SECTION 7**

1 (b) The department shall send to each company that notifies the department  
2 under par. (a) a job relocation survey that shall include, in addition, to any other  
3 information required by the department, all of the following:

4 1. The name and principle place of business of the company.

5 2. Identification of any public contracts that the company has with the state  
6 or a local governmental unit.

7 3. Identification of any grants or loans that the company has received from the  
8 state or a local governmental unit.

9 4. Identification of any tax exemptions or credits that the company claims  
10 under ch. 70 or 71.

11 5. A statement of the number of the company's employees in this state who lost  
12 their jobs in the preceding calendar year.

13 6. A statement of the number of jobs that the company added in this state in  
14 the preceding calendar year.

15 7. A statement of the number of the company's employees in this state who lost  
16 their jobs because the jobs were transferred to employees located outside of the  
17 United States.

18 (c) A company shall complete and return the survey to the department within  
19 30 days of receiving it. A company that fails to respond to the survey is subject to the  
20 penalties under sub. (4) until such time that the survey is completed and returned  
21 to the department.

22 (3) CERTIFIED LIST. The department shall maintain a list of companies that are  
23 subject to the penalties under sub. (4) and shall post, and update, that list on its Web  
24 site. Waivers or modifications made under sub. (5) shall be noted on the list and Web  
25 site.



**BILL**

1           (4) PENALTIES. Notwithstanding the provisions of any tax exemption under ch.  
2       70 or tax credit under ch. 71 for which a company would otherwise be eligible, no  
3       company that has had a net loss of at least <sup>50</sup>~~100~~ employees because of jobs being  
4       transferred to employees outside of the United States, as reported under sub. (2) (b)  
5       7., an no expatriate company shall, for a period of 7 years beginning with the year  
6       in which the company is required to report the loss under sub. (2), be eligible to:

7           (a) Receive any tax exemption under ch. 70 or any tax credit under ch. 71.

8           (b) Enter into a public contract with a local governmental unit.

9           (c) Receive any grants or loans from a local governmental unit.

10          (d) Enter into a contract for the purchase of materials, supplies, equipment, or  
11       contractual services with any agency.

12          (e) Enter into a contract for engineering or architectural services or for  
13       construction work, as defined in s. 16.87 (1) (a), with any agency.

14          (5) WAIVERS; MODIFICATIONS. (a) A waiver or modification of a penalty in sub.  
15       (4) may be granted if the appropriate agency finds that the waiver or modification  
16       of a penalty that would otherwise be imposed is necessary to meet a compelling public  
17       interest, the department concurs, and the conditions of par. (b) are met. A waiver or  
18       modification of a penalty in sub. (4) that would otherwise be imposed on a company  
19       that is a prospective vendor to a local governmental unit may be granted if the  
20       department finds that the waiver or modification is necessary to meet a compelling  
21       public interest and the conditions of par. (b) are met.

22          (b) If the department under par. (a) concurs with an agency or finds that a  
23       waiver or modification request is necessary to meet a compelling public interest, it  
24       shall prepare a detailed opinion to that effect and submit the opinion and the request  
25       to the department of administration and the joint committee on finance. A waiver

**BILL****SECTION 7**

1 or modification request may only be granted under this section if both the  
2 department of administration and the joint committee on finance approve the  
3 request. The department of administration and the joint committee on finance shall  
4 approve or disapprove under this paragraph within 30 days of submission of the  
5 opinion and request.

6 (6) DECLARATION; MISDEMEANOR FOR FALSE STATEMENTS. (a) Before entering into  
7 a public contract, all agencies and local governmental units shall review the  
8 department's Web site list described under sub. (3). As a condition of entering into  
9 a public contract with an agency or local governmental unit, a company shall submit  
10 a declaration stating that the company is not on the list under sub. (3).

11 (b) A company that declares as true any material matter in a declaration under  
12 par. (a) that the company knows or has reason to believe is false is guilty of a  
13 misdemeanor.

14 (7) RULES. The department shall promulgate rules to implement and  
15 administer this section.

16 (END)

**Lief, Madelon**

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**From:** Lief, Madelon  
**Sent:** Tuesday, March 08, 2005 4:06 PM  
**To:** Powell, Thomas  
**Subject:** RE: question on the Berceau outsourcing bill you drafted

Tom--I can't say why it was not included until I look at the file, which I won't have a chance to do until tomorrow. If you're right, and I have no reason to think you're not, then the failure to include the language was an oversight that I'd be happy to remedy with a redraft. I'll be in touch tomorrow.

-----Original Message-----

**From:** Powell, Thomas  
**Sent:** Tuesday, March 08, 2005 2:00 PM  
**To:** Lief, Madelon  
**Subject:** question on the Berceau outsourcing bill you drafted

Lonnie,

Regarding the outsourcing bill you drafted for Terese (LRB 1162), we've had a few questions from interested legislators.

As I read it, it denies expatriate and outsourcing companies:

1. income or franchise tax credits
2. property tax exemptions
3. state or local contracts for construction, remodeling or repair of a public work or building, or furnishing supplies, services, equipment, or material of any kind.
4. grants or loans from a local government

The questions is: why are grants or loans from \*state\* government not also prohibited?

As I remember, I included such a prohibiton in the language I originally forwarded to you, but I assumed you didn't include it in the final draft because you had a good reason not to. Is this the case? Can you clarify for me?

Thanks much,  
Tom P.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1162/3 4  
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2005 ASSEMBLY BILL

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Due 3/10  
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1 AN ACT *to amend* 16.75 (6) (e), 16.855 (18), 16.855 (21) and 16.855 (22); and *to*  
2 *create* 16.753, 16.855 (23) and 560.29 of the statutes; **relating to:** requiring  
3 companies to report net losses of jobs to the Department of Commerce, making  
4 such companies and certain expatriate companies ineligible for certain tax  
5 exemptions, governmental contracts, grants, and loans, granting rule-making  
6 authority, and providing a penalty.

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***Analysis by the Legislative Reference Bureau***

Beginning in January 2007, this bill requires a business that experienced a net loss of at least 50 employees in the preceding calendar year to notify the Department of Commerce (Commerce). The company must also complete and submit to Commerce a job relocation survey that includes, among other things, a statement of the number of those jobs that were transferred to employees located outside the United States and any contracts with or grants or loans made by the state or local government.

Under the bill, any company that has had a net loss of at least 50 employees because of jobs being transferred to employees outside of the United States and any expatriate company (a company that is organized under the laws of another country that is closely related to a company or former company organized in the United States) is, for a period of seven years, ineligible to: 1) receive any income or franchise tax credit or property tax exemption; 2) enter into a contract with the state or a local

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governmental unit for the construction, remodeling, or repair of a public work or building, or for the furnishing of supplies, services, equipment, or material of any kind; and 3) receive any grants or loans from a local governmental unit. Under the bill, Commerce is required to maintain and update a list of such companies, and to post the list on its Web site. Agencies and local governmental units must review the list before entering into public contracts.

The ineligibility of a company under the bill may be waived or modified if Commerce believes that doing so is necessary to meet a compelling public interest, Commerce submits a written justification to the Department of Administration (DOA) and the Joint Committee on Finance (JCF), and both DOA and JCF approve the waiver. Finally, before entering into a contract with an agency or local governmental unit, a company must submit a declaration that the company is eligible to enter the contract under the bill. A company that knowingly makes a false, material statement in a declaration is guilty of a misdemeanor.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 16.75 (6) (e) of the statutes is amended to read:

2           16.75 (6) (e) The governor or his or her designee may waive any requirement  
3 of this subchapter if the governor or his or her designee finds that there exists an  
4 emergency which threatens the public health, safety or welfare and the waiver is  
5 necessary to meet the emergency. The governor or his or her designee shall require  
6 the award of each contract under this paragraph to be made with such competition  
7 as is practicable under the circumstances. The governor or his or her designee shall  
8 file with the department a statement of facts constituting the emergency for each  
9 waiver issued under this paragraph, and a statement of the basis for selection of each  
10 contractor under the emergency procedure. This paragraph does not apply to the  
11 requirement requirements specified in sub. (7) and s. 16.753.

12           **SECTION 2.** 16.753 of the statutes is created to read:

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**1           16.753 Companies experiencing job losses and expatriate companies.**

2       No company whose name is certified by the department of commerce under s. 560.29  
3       (3) and no expatriate company, as defined in s. 560.29 (1), is eligible to enter into any  
4       contract with an agency for the purchase of materials, supplies, equipment, or  
5       contractual services for a period of 7 years beginning with the year in which the  
6       company is required to submit a report under s. 560.29 (2).

7       **SECTION 3.** 16.855 (18) of the statutes is amended to read:

8       16.855 (18) This Except as provided in sub. (23), this section shall not apply  
9       to restoration or reconstruction of the state capitol building, historic structures at the  
10      old world Wisconsin site and at Heritage Hill state park when the department  
11      determines that a waiver of this section would serve the best interests of this state.

12      **SECTION 4.** 16.855 (21) of the statutes is amended to read:

13      16.855 (21) This Except as provided in sub. (23), this section does not apply to  
14      contracts by the department of natural resources for construction work related to  
15      hazardous substance spill response under s. 292.11 or environmental repair under  
16      s. 292.31.

17      **SECTION 5.** 16.855 (22) of the statutes is amended to read:

18      16.855 (22) The provisions of this section, except ~~sub.~~ subs. (10m) and (23), do  
19      not apply to construction work for any project the estimated construction cost of  
20      which does not exceed \$100,000 if the project is constructed in accordance with  
21      policies and procedures prescribed by the building commission under s. 13.48 (29).  
22      If the estimated construction cost of any project is at least \$30,000, and the building  
23      commission elects to utilize the procedures prescribed under s. 13.48 (29) to construct  
24      the project, the department shall provide adequate public notice of the project and

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1 the procedures to be utilized to construct the project on a publicly accessible  
2 computer site.

3 **SECTION 6.** 16.855 (23) of the statutes is created to read:

4 16.855 (23) No company whose name is certified by the department of  
5 commerce under s. 560.29 (3) and no expatriate company, as defined in s. 560.29 (1)  
6 (c), is eligible to enter into any contract with an agency for engineering or  
7 architectural services or for construction work, as defined in s. 16.87 (1) (a) for a  
8 period of 7 years beginning with the year in which the company is required to submit  
9 a report under s. 560.29 (2).

10 **SECTION 7.** 560.29 of the statutes is created to read:

11 **560.29 Companies experiencing job losses and expatriate companies.**

12 (1) DEFINITIONS. In this section:

13 (a) "Agency" has the meaning given in s. 16.70 (1e).

14 (b) "Company" means any organization or enterprise operated for profit,  
15 including a proprietorship, partnership, firm, business trust, joint venture,  
16 syndicate, corporation, limited liability company, or association.

17 (c) "Expatriate company" means an entity that the department determines is  
18 incorporated under the laws of a foreign country, that issues shares for which the  
19 United States is the principal market for public trading, that has no substantial  
20 business activities in its country of incorporation, and that was one of the following:

21 1. Established in connection with a transaction or series of related transactions  
22 pursuant to which the entity directly or indirectly acquired substantially all of the  
23 properties held by a corporation incorporated in the United States or all of the  
24 properties constituting a trade or business of a partnership organized in the United  
25 States or a related partnership not organized in the United States, and immediately

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1 after the acquisition, more than 50 percent of the shares, by vote or value, of the  
2 entity was held by former shareholders of the corporation incorporated in the United  
3 States or by former partners of the partnership organized in the United States or a  
4 related partnership not organized in the United States. For purposes of this  
5 subdivision, any shares sold in a public offering related to the transaction or a series  
6 of transactions is disregarded.

7 2. Established in connection with a transaction or series of related transactions  
8 pursuant to which the entity directly or indirectly acquired substantially all of the  
9 properties held by a corporation incorporated in the United States or all of the  
10 properties constituting a trade or business of a partnership organized in the United  
11 States or a related partnership not organized in the United States, if the acquiring  
12 entity is more than 50 percent owned, by vote or value, by shareholders or partners  
13 who are residents of the United States. For purposes of this subdivision, indirect  
14 acquisition of property includes the acquisition of a share, or any portion thereof, of  
15 the owner of that property.

16 (d) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a).

17 (e) "Public contract" means a contract for the construction, execution, repair,  
18 remodeling, or improvement of a public work or building or for the furnishing of  
19 supplies services, equipment, or material of any kind.

20 (2) REPORTING. (a) On or before January 31, 2007, and annually by January  
21 31 thereafter, any company doing business in this state that had a net loss of at least  
22 50 employees in this state during the preceding calendar year shall notify the  
23 department of the loss.



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1 (b) The department shall send to each company that notifies the department  
2 under par. (a) a job relocation survey that shall include, in addition, to any other  
3 information required by the department, all of the following:

4 1. The name and principle place of business of the company.

5 2. Identification of any public contracts that the company has with the state  
6 or a local governmental unit.

7 3. Identification of any grants or loans that the company has received from ~~the~~ <sup>this</sup>  
8 state or a local governmental unit.

9 4. Identification of any tax exemptions or credits that the company claims  
10 under ch. 70 or 71.

11 5. A statement of the number of the company's employees in this state who lost  
12 their jobs in the preceding calendar year.

13 6. A statement of the number of jobs that the company added in this state in  
14 the preceding calendar year.

15 7. A statement of the number of the company's employees in this state who lost  
16 their jobs because the jobs were transferred to employees located outside of the  
17 United States.

18 (c) A company shall complete and return the survey to the department within  
19 30 days of receiving it. A company that fails to respond to the survey is subject to the  
20 penalties under sub. (4) until such time that the survey is completed and returned  
21 to the department.

22 (3) CERTIFIED LIST. The department shall maintain a list of companies that are  
23 subject to the penalties under sub. (4) and shall post, and update, that list on its Web  
24 site. Waivers or modifications made under sub. (5) shall be noted on the list and Web  
25 site.

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1           (4) PENALTIES. Notwithstanding the provisions of any tax exemption under ch.  
2       70 or tax credit under ch. 71 for which a company would otherwise be eligible, no  
3       company that has had a net loss of at least 50 employees because of jobs being  
4       transferred to employees outside of the United States, as reported under sub. (2) (b)  
5       7., an no expatriate company shall, for a period of 7 years beginning with the year  
6       in which the company is required to report the loss under sub. (2), be eligible to:

7           (a) Receive any tax exemption under ch. 70 or any tax credit under ch. 71.

8           (b) Enter into a public contract with a local governmental unit.

9           (c) Receive any grants or loans from this state or from a local governmental unit.

10          (d) Enter into a contract for the purchase of materials, supplies, equipment, or  
11       contractual services with any agency.

12          (e) Enter into a contract for engineering or architectural services or for  
13       construction work, as defined in s. 16.87 (1) (a), with any agency.

14          (5) WAIVERS; MODIFICATIONS. (a) A waiver or modification of a penalty in sub.  
15       (4) may be granted if the appropriate agency finds that the waiver or modification  
16       of a penalty that would otherwise be imposed is necessary to meet a compelling public  
17       interest, the department concurs, and the conditions of par. (b) are met. A waiver or  
18       modification of a penalty in sub. (4) that would otherwise be imposed on a company  
19       that is a prospective vendor to a local governmental unit may be granted if the  
20       department finds that the waiver or modification is necessary to meet a compelling  
21       public interest and the conditions of par. (b) are met.

22          (b) If the department under par. (a) concurs with an agency or finds that a  
23       waiver or modification request is necessary to meet a compelling public interest, it  
24       shall prepare a detailed opinion to that effect and submit the opinion and the request  
25       to the department of administration and the joint committee on finance. A waiver

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1 or modification request may only be granted under this section if both the  
2 department of administration and the joint committee on finance approve the  
3 request. The department of administration and the joint committee on finance shall  
4 approve or disapprove under this paragraph within 30 days of submission of the  
5 opinion and request.

6 **(6) DECLARATION; MISDEMEANOR FOR FALSE STATEMENTS.** (a) Before entering into  
7 a public contract, all agencies and local governmental units shall review the  
8 department's Web site list described under sub. (3). As a condition of entering into  
9 a public contract with an agency or local governmental unit, a company shall submit  
10 a declaration stating that the company is not on the list under sub. (3).

11 (b) A company that declares as true any material matter in a declaration under  
12 par. (a) that the company knows or has reason to believe is false is guilty of a  
13 misdemeanor.

14 **(7) RULES.** The department shall promulgate rules to implement and  
15 administer this section.

16 **(END)**